

In the Matter of Merchant Mariner's Document No. Z-833958-D2 and all other Seaman Documents

Issued to: Roy Leon Pritchett

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1176

Roy Leon Pritchett

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 30 September 1959, an Examiner of the United States Coast Guard at New Orleans, Louisiana revoked Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as chief electrician on board the United States SS ALCOA PARTNER under authority of the document above described, on or about 3 August 1959, Appellant wrongfully engaged in mutual combat with a crew member, Douglas V. Cann (oiler); Appellant assaulted and battered the same member of the crew on this date.

At the hearing, Appellant was represented by a union patrolman. Appellant entered a plea of guilty to the specification alleging mutual combat and not guilty to the specification alleging assault and battery.

Evidence was submitted by both parties and statements by three crew members were stipulated in evidence. Three letters as to Appellant's good reputation on the ship were introduced by Appellant. Both participants in the fight testified. Appellant stated that he walked up to Cann and suggested that he should not repeat an insulting remark about people from Mobile; the fight started when Cann then struck Appellant on the nose; Appellant had nothing in his hand during the fight "to the best of my recollection" (R. 39, 52); Appellant received superficial facial injuries which he did not report.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. An order was entered revoking all documents issued to Appellant.

FINDINGS OF FACT

On 3 August 1959, Appellant was serving as chief electrician on board the United States SS ALCOA PARTNER and acting under authority of his Merchant Mariner's Document No. Z-833958-D2 while the ship was in the port of Leghorn, Italy.

About 2200 on this date, Appellant and Douglas V. Cann, an oiler, engaged in a fight concerning an insulting remark which Appellant claims that Cann made about people from Mobile. While the two seamen were fighting with their fists, Appellant took a pair of pliers or a similar hand tool out of his pocket and struck Cann three or four times on the head with it before another member of the crew stopped the fight.

Cann suffered a two-inch cut on the forehead which required several stitches. He was off duty for four days. Appellant received minor facial injuries.

Appellant's prior record consists of a two months' outright suspension plus a probationary suspension in 1954 for assault and battery on a messman.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the decision is contrary to the preponderance of the evidence; the evidence against Appellant was prejudiced; the evidence in Appellant's favor was rejected without sufficient reason; the Examiner was prejudiced against Appellant because of his prior record; the offense was not sufficiently serious to impose an order of revocation.

APPEARANCE ON APPEAL: Moore, Simon and Layden of Mobile, Alabama, by Lionel L. Layden, Esquire, of Counsel.

OPINION

The Examiner, as the trier of the facts who saw and heard the two seamen testify, rejected the testimony of Appellant and accepted the version of the fight presented by Cann. Although I see no reason to disturb this choice of credibility arrived at by the Examiner, my findings of fact represent more closely the version of the crew members, whose statements were stipulated in evidence, than Cann's testimony that he did not see Appellant until after he struck Cann on the forehead with a hard object. The reason for so finding is that two of the crew members, in their statements, related that both seamen were swinging at each other before Appellant took a pair of pliers out of his pocket; and there is some indication in the record that the latter version agrees with the statement made by Appellant at the investigation on 6 August (R. 29, 30). The Examiner did not make any specific findings on this point and I think the probabilities are that the fight had started before Appellant took out a weapon.

The contentions raised on appeal do not convince me that Appellant was not guilty. Having rejected Appellant's version of the fight, there is little in his favor except the three letters as to his good reputation at all times before and after this incident. The Examiner considered these letters in his decision, but felt that their value was offset by Appellant's prior record of an assault and battery in 1954. I agree that this prior record was adequate basis for rejecting evidence in mitigation which

was favorable to Appellant. Such action did not indicate undue prejudice on the part of the Examiner.

There is substantial evidence to support not only the offense of mutual combat, but also the more serious offense that Appellant assaulted and battered Cann with a dangerous weapon. Nevertheless, it is my opinion that the order of revocation is excessive. The evidence indicates that the use of the weapon occurred in the heat of battle and was not a surprise attack from behind as Cann testified. Cann was not seriously injured by the weapon. Under all the circumstances, it is my opinion that the fairest disposition is to modify the order of revocation to an outright suspension for one year.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 30 September 1959, is modified to provide for an outright suspension of twelve (12) months.

As so MODIFIED, said order is AFFIRMED.

J A Hirshfield
Vice Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this [?] day of June 1960.